

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SEVENTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE Mr. JUSTICE C.V.RAMULU

WRIT PETITION No. 33681 of 1998

Between:

P.Mallaiah, S/o Somaiah,
R/o H.No.13-125, Margadarsi Colony,

Ramakrishnapuram, Hyderabad-35.

..... PETITIONER

AND

- 1 The Hon'ble Labour Court-I,
Hyderabad.
- 2 The Depot Manager, APSRTC, Dilsukhnagar City Depot,
Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an order, direction or writ particularly one in the nature of Writ of Certiorari and after calling for the records from the 1st Respondent in I.D.No.5/94 and quash the Award dt.4-2-9 in so far as confirming the termination order dt.2-4-92 passed by the 2nd respondent as illegal, arbitrary and unjust and consequently direct the respondents to reinstate the petitioner into service, with continuity of service, back wages and all other attendant benefits; and pass such further other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner: Smt. P.VIJAYA KUMARI

Counsel for the Respondent No.1: GP FOR LABOUR

Counsel for the Respondent No.2: Sri V.T.M. PRASAD

The Court made the following :

ORAL ORDER:

This Writ Petition is filed by the workman being aggrieved by the Award dated 4-2-1998 in I.D.No.5 of 1994 on the file of the Labour Court-I, Hyderabad, wherein the claim petition filed by him under Section 2-A(2) of the Industrial Disputes Act,1947 (for short 'the Act') was rejected without granting any relief.

It is the case of the petitioner that he was appointed as a Driver in the respondent-Corporation in the year 1981. He was discharging duties to the utmost satisfaction of the authorities and there were no adverse remarks against him. While so, the Superintendent (T) of the 2nd respondent-depot reported on 16-9-1991 against him stating that he drove the vehicle in a drunken state on 7-8-1991. Basing on the said report, the 2nd respondent issued a charge sheet on 21-9-1991 enumerating the following charge:

“for being in drunken condition while performing parking duty in the garage from 18.00 to 1.00 hours on 7.8.91 and causing damage to diesel pump cabin while parking bus AAZ 4607 at about 21.00 hours - bus also damaged.”

He submitted his explanation denying the said charge. However, the 2nd respondent without considering the explanation submitted by him, directed for conducting a detailed enquiry into the matter. A farce of an enquiry was conducted and without there being any evidence on record, the Enquiry Officer held him guilty of the charge. The 2nd respondent basing on the said report, issued a show cause notice dated 14-3-1992 and finally his services were terminated by Proceedings dated 2-4-

1992. Aggrieved by the same, he filed an appeal and the same was also rejected on 2-11-1993. Therefore, he raised a dispute under Section 2-A(2) of the Act before the Labour Court-I, Hyderabad, which was taken on file in I.D.No.5 of 1994. The Labour Court also did not appreciate the evidence properly and confirmed the order of illegal termination of his services by the 2nd respondent. Hence, this Writ Petition.

The learned counsel for the petitioner strenuously contended that absolutely there was no evidence as to the drunken condition of the petitioner while he was performing the duty in the garage on 7-8-1991. In fact, the petitioner was ill and he had taken 'Zinda Tilismath' and that was smelling. Except the oral testimony of the Superintendent, there was no other oral or documentary evidence in support of the allegations made by the Management. Even according to the purported report (out-patient ticket) there was some alcoholic smell from the petitioner. Learned counsel asserts that even Zinda Tilismath also smells like alcohol. Even otherwise, assuming that the charges are proved, the punishment of removal from service was disproportionate to that of the misconduct alleged, since the misconduct was minor and trivial. The Labour Court did not exercise the powers vested in it under Section 11-A of the Act. Therefore, the award under challenge is liable to be set aside and the petitioner is entitled for being reinstated into service with all consequential benefits.

Sri V.T.M. Prasad, learned counsel for the respondent-Corporation, submitted that this is a case of drunkenness and a drunken driving is always dangerous. May be, in this case there was not much damage and the petitioner had clean record of 10 years, but that itself does not mean that the charges are trivial in nature requiring interference by the Labour Court. The Labour Court has considered every aspect in detail and came to the conclusion that the decision of the management in terminating the services of the petitioner was just and proper. Therefore, the Award passed by the Labour Court does not call for interference of this Court under Article 226 of the Constitution of India.

I have given my earnest consideration to the submissions made by the learned counsel on either side. Perused the Award of the Labour Court and other material placed on record.

At the outset, I am of the opinion that though there is some oral evidence to prove that the petitioner was in a drunken condition, there is no medical evidence as such

in this regard. There was no certificate issued by any competent Medical Officer to the effect that the petitioner was in a drunken and intoxicated condition and he was not able to manage himself and was unfit for his duties at that point of time. Only on the oral statement of the Superintendent, Dilsukhnagar Depot and the outpatient slip of Osmania General Hospital, the Enquiry Officer found that the charges against the petitioner were proved. Since there is some evidence, it cannot be said that the same is not sufficient to hold the petitioner guilty of the charge. But, however, this is not a case where there is evidence to show that the Driver was in an aberrated and intoxicated condition.

Be that as it may, the drinking and driving cannot go together and there is definitely misconduct on the part of the petitioner, which was proved. But, I am of the opinion that for the trivial misconduct of this nature, the punishment of removal from service is shockingly disproportionate to that of the misconduct alleged and proved. Further, in the 10 long years of service, the petitioner had no blame whatsoever. Taking all these things into consideration, I am of the opinion that the Labour Court grossly erred in not exercising the power vested in it under Section 11-A of the Act properly. The Labour Court ought to have imposed any lesser punishment instead of confirming the removal order passed by the Management. The petitioner was removed from service in the year 1992 and his appeal was rejected on 2-11-1993 and he raised an industrial dispute I.D.No.5 of 1994, which was disposed of on 4-2-1998. In view of the long pendency of the litigation, I feel it appropriate to modify the punishment, in this case itself, to give a quietus to the litigation.

In the result, the Writ Petition is allowed. The respondent-management is directed to reinstate the petitioner with continuity of service, but without any back wages and without any attendant benefits; such as, notional increments, promotion etc. Further, the petitioner shall be put on the minimum of the time scale applicable to the post of a Driver as of now. No order as to costs.

07-07-2005

prk

The Rule nisi has been made absolute as above.

Witness the Hon'ble Sri Bilal Nazki, the Acting Chief Justice on this the Thursday,
Seventh day of July Two thousand and Five.

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

- 1 The Presiding Officer, Hon'ble Labour Court-I,
Hyderabad.
- 2 The Depot Manager, APSRTC, Dilsukhnagar City Depot,
Hyderabad.

3 CD copies

4 2 CCs to G.P.for Labour, High Court Buildings, Hyderabad (OUT)